

AMENDED IN SENATE JULY 11, 1997

AMENDED IN SENATE JULY 7, 1997

AMENDED IN ASSEMBLY APRIL 3, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1148

Introduced by Assembly Members Cunneen and Figueroa

February 28, 1997

An act to amend Section 1063.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1148, as amended, Cunneen. California Insurance Guarantee Association.

(1) Existing law requires the formation of the California Insurance Guarantee Association, which exists for the purpose of providing insolvency insurance to its members. Insurers offering certain classes of insurance are required to participate in the association. The association is required to pay and discharge covered claims of participating insurers. Covered claims are currently defined not to include obligations of an insolvent insurer arising out of reinsurance contracts.

This bill would provide that covered claims also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to

transact business in this state and if certain other requirements are met.

(2) This bill would also incorporate additional changes to Section 1063.1 of the Insurance Code proposed by SB 1277, contingent on the prior enactment of that bill.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1063.1 of the Insurance Code is
2 amended to read:

3 1063.1. As used in this article:

4 (a) “Member insurer” means an insurer required to be
5 a member of the association in accordance with
6 subdivision (a) of Section 1063, except and to the extent
7 that the insurer is participating in an insolvency program
8 adopted by the United States government.

9 (b) “Insolvent insurer” means a member insurer
10 against which an order of liquidation or receivership with
11 a finding of insolvency has been entered by a court of
12 competent jurisdiction.

13 (c) (1) “Covered claims” means the obligations of an
14 insolvent insurer, including the obligation for unearned
15 premiums, (i) imposed by law and within the coverage
16 of an insurance policy of the insolvent insurer; (ii) which
17 were unpaid by the insolvent insurer; (iii) which are
18 presented as a claim to the liquidator in this state or to the
19 association on or before the last date fixed for the filing of
20 claims in the domiciliary liquidating proceedings; (iv)
21 which were incurred prior to the date coverage under the
22 policy terminated and prior to, on, or within 30 days after
23 the date the liquidator was appointed; (v) for which the
24 assets of the insolvent insurer are insufficient to discharge
25 in full; (vi) in the case of a policy of workers’
26 compensation insurance, to provide workers’
27 compensation benefits under the workers’ compensation
28 law of this state; and (vii) in the case of other classes of
29 insurance if the claimant or insured is a resident of this
30 state at the time of the insured occurrence, or the



1 property from which the claim arises is permanently
2 located in this state.

3 (2) "Covered claims" also include the obligations
4 assumed by an assuming insurer from a ceding insurer
5 where the assuming insurer subsequently becomes an
6 insolvent insurer if, at the time of the insolvency of the
7 assuming insurer, the ceding insurer is no longer
8 admitted to transact business in this state. Both the
9 assuming insurer and the ceding insurer shall have been
10 member insurers at the time the assumption was made.
11 *"Covered claims" under this paragraph shall be required*
12 *to satisfy the requirements of subparagraphs (i) to (vii),*
13 *inclusive, of paragraph (1), except for the requirement*
14 *that the claims be against policies of the insolvent insurer.*
15 The association shall have a right to recover any deposit,
16 bond, or other assets that may have been required to be
17 posted by the ceding company to the extent of covered
18 claim payments and shall be subrogated to any rights the
19 policyholders may have against the ceding insurer.

20 (3) "Covered claims" does not include any obligations
21 arising from the following:

22 (i) Life, annuity, health, or disability insurance.

23 (ii) Mortgage guaranty, financial guaranty, or other
24 forms of insurance offering protection against investment
25 risks.

26 (iii) Fidelity or surety insurance including fidelity or
27 surety bonds, or any other bonding obligations.

28 (iv) Credit insurance.

29 (v) Title insurance.

30 (vi) Ocean marine insurance or ocean marine
31 coverage under any insurance policy including claims
32 arising from the following: the Jones Act (46 U.S.C.A. Sec.
33 688), the Longshore and Harbor Workers' Compensation
34 Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar
35 federal statutory enactment, or any endorsement or
36 policy affording protection and indemnity coverage.

37 (vii) Any claims servicing agreement or insurance
38 policy providing retroactive insurance of a known loss or
39 losses, except a special excess workers' compensation
40 policy issued pursuant to paragraph (2) of subdivision (a)

1 of Section 3702.8 of the Labor Code that cover all or any
2 part of workers' compensation liabilities of an employer
3 that was previously issued a certificate of consent to
4 self-insure pursuant to subdivision (b) of Section 3700 of
5 the Labor Code.

6 (4) "Covered claims" does not include any obligations
7 of the insolvent insurer arising out of any reinsurance
8 contracts, nor any obligations incurred after the
9 expiration date of the insurance policy or after the
10 insurance policy has been replaced by the insured or
11 canceled at the insured's request, or after the insurance
12 policy has been canceled by the association as provided
13 in this chapter, or after the insurance policy has been
14 canceled by the liquidator, nor any obligations to any
15 state or to the federal government.

16 (5) "Covered claims" does not include any obligations
17 to insurers, insurance pools, or underwriting associations,
18 nor their claims for contribution, indemnity, or
19 subrogation, equitable or otherwise, except as otherwise
20 provided in this chapter.

21 No insurer, insurance pool, or underwriting association
22 may maintain, in its own name or in the name of its
23 insured, any claim or legal action against the insured of
24 the insolvent insurer for contribution, indemnity, or by
25 way of subrogation, except insofar as, and to the extent
26 only, that the claim exceeds the policy limits of the
27 insolvent insurer's policy. In those claims or legal actions,
28 the insured of the insolvent insurer is entitled to a credit
29 or setoff in the amount of the policy limits of the insolvent
30 insurer's policy, or in the amount of the limits remaining,
31 where those limits have been diminished by the payment
32 of other claims.

33 (6) "Covered claims," except in cases involving a
34 claim for workers' compensation benefits or for unearned
35 premiums, does not include any claim in an amount of
36 one hundred dollars (\$100) or less, nor that portion of any
37 claim that is in excess of any applicable limits provided in
38 the insurance policy issued by the insolvent insurer.

39 (7) "Covered claims" does not include that portion of
40 any claim, other than a claim for workers' compensation

1 benefits, that is in excess of five hundred thousand dollars
2 (\$500,000).

3 (8) “Covered claims” does not include any amount
4 sought as a return of a premium under any policy
5 providing retroactive insurance of a known loss or losses.

6 (9) “Covered claims” does not include any amount
7 awarded as punitive or exemplary damages.

8 (10) “Covered claims” does not include (i) any claim
9 to the extent it is covered by any other insurance of a class
10 covered by the provisions of this article available to the
11 claimant or insured nor (ii) any claim by any person other
12 than the original claimant under the insurance policy in
13 his or her own name, his or her assignee as the person
14 entitled thereto under a premium finance agreement as
15 defined in Section 673 and entered into prior to
16 insolvency, his or her executor, administrator, guardian
17 or other personal representative or trustee in bankruptcy
18 and does not include any claim asserted by an assignee or
19 one claiming by right of subrogation, except as otherwise
20 provided in this chapter.

21 (11) “Covered claims” does not include any
22 obligations arising out of the issuance of an insurance
23 policy written by the separate division of the State
24 Compensation Insurance Fund pursuant to the
25 provisions of Sections 11802 and 11803.

26 (12) “Covered claims” does not include any
27 obligations of the insolvent insurer arising from any
28 policy or contract of insurance issued or renewed prior to
29 the insolvent insurer’s admission to transact insurance in
30 the State of California.

31 (13) “Covered claims” does not include surplus
32 deposits of subscribers as defined in Section 1374.1.

33 (d) “Admitted to transact insurance in this state”
34 means an insurer possessing a valid certificate of
35 authority issued by the California Department of
36 Insurance.

37 (e) “Affiliate” means a person who directly or
38 indirectly, through one or more intermediaries, controls,
39 is controlled by, or is under common control with an
40 insolvent insurer on December 31 of the year next

1 preceding the date the insurer becomes an insolvent
2 insurer.

3 (f) “Control” means the possession, direct or indirect,
4 of the power to direct or cause the direction of the
5 management and policies of a person, whether through
6 the ownership of voting securities, by contract other than
7 a commercial contract for goods or nonmanagement
8 services, or otherwise, unless the power is the result of an
9 official position with or corporate office held by the
10 person. Control is presumed to exist if any person,
11 directly or indirectly, owns, controls, holds with the
12 power to vote, or holds proxies representing, 10 percent
13 or more of the voting securities of any other person. This
14 presumption may be rebutted by showing that control
15 does not in fact exist.

16 (g) “Claimant” means any insured making a first party
17 claim or any person instituting a liability claim; provided
18 that no person who is an affiliate of the insolvent insurer
19 may be a claimant.

20 (h) “Ocean marine insurance” includes marine
21 insurance as defined in Section 103, except for inland
22 marine insurance, as well as any other form of insurance,
23 regardless of the name, label, or marketing designation of
24 the insurance policy, that insures against maritime perils
25 or risks and other related perils or risks, which are usually
26 insured against by traditional marine insurance such as
27 hull and machinery, marine builders’ risks, and marine
28 protection and indemnity. Those perils and risks insured
29 against include, without limitation, loss, damage, or
30 expense or legal liability of the insured arising out of or
31 incident to ownership, operation, chartering,
32 maintenance, use, repair, or construction of any vessel,
33 craft or instrumentality in use in ocean or inland
34 waterways, including liability of the insured for personal
35 injury, illness, or death for loss or damage to the property
36 of the insured or another person.

37 SEC. 1.5. Section 1063.1 of the Insurance Code is
38 amended to read:

39 1063.1. As used in this article:



1 (a) "Member insurer" means an insurer required to be
2 a member of the association in accordance with
3 subdivision (a) of Section 1063, except and to the extent
4 that the insurer is participating in an insolvency program
5 adopted by the United States government.

6 (b) "Insolvent insurer" means a member insurer
7 against which an order of liquidation or receivership with
8 a finding of insolvency has been entered by a court of
9 competent jurisdiction.

10 (c) (1) "Covered claims" means the obligations of an
11 insolvent insurer, including the obligation for unearned
12 premiums, (i) imposed by law and within the coverage
13 of an insurance policy of the insolvent insurer; (ii) which
14 were unpaid by the insolvent insurer; (iii) which are
15 presented as a claim to the liquidator in this state or to the
16 association on or before the last date fixed for the filing of
17 claims in the domiciliary liquidating proceedings; (iv)
18 which were incurred prior to the date coverage under the
19 policy terminated and prior to, on, or within 30 days after
20 the date the liquidator was appointed; (v) for which the
21 assets of the insolvent insurer are insufficient to discharge
22 in full; (vi) in the case of a policy of workers'
23 compensation insurance, to provide workers'
24 compensation benefits under the workers' compensation
25 law of this state; and (vii) in the case of other classes of
26 insurance if the claimant or insured is a resident of this
27 state at the time of the insured occurrence, or the
28 property from which the claim arises is permanently
29 located in this state.

30 (2) "Covered claims" also include the obligations
31 assumed by an assuming insurer from a ceding insurer
32 where the assuming insurer subsequently becomes an
33 insolvent insurer if, at the time of the insolvency of the
34 assuming insurer, the ceding insurer is no longer
35 admitted to transact business in this state. Both the
36 assuming insurer and the ceding insurer shall have been
37 member insurers at the time the assumption was made.
38 *"Covered claims" under this paragraph shall be required*
39 *to satisfy the requirements of subparagraphs (i) to (vii),*
40 *inclusive, of paragraph (1), except for the requirement*

1 *that the claims be against policies of the insolvent insurer.*
2 The association shall have a right to recover any deposit,
3 bond, or other assets that may have been required to be
4 posted by the ceding company to the extent of covered
5 claim payments and shall be subrogated to any rights the
6 policyholders may have against the ceding insurer.

7 (3) “Covered claims” does not include obligations
8 arising from the following:

9 (i) Life, annuity, health, or disability insurance.

10 (ii) Mortgage guaranty, financial guaranty, or other
11 forms of insurance offering protection against investment
12 risks.

13 (iii) Fidelity or surety insurance including fidelity or
14 surety bonds, or any other bonding obligations.

15 (iv) Credit insurance.

16 (v) Title insurance.

17 (vi) Ocean marine insurance or ocean marine
18 coverage under any insurance policy including claims
19 arising from the following: the Jones Act (46 U.S.C.A. Sec.
20 688), the Longshore and Harbor Workers’ Compensation
21 Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar
22 federal statutory enactment, or any endorsement or
23 policy affording protection and indemnity coverage.

24 (vii) Any claims servicing agreement or insurance
25 policy providing retroactive insurance of a known loss or
26 losses, except a special excess workers’ compensation
27 policy issued pursuant to paragraph (2) of subdivision (a)
28 of Section 3702.8 of the Labor Code that cover all or any
29 part of workers’ compensation liabilities of an employer
30 that was previously issued a certificate of consent to
31 self-insure pursuant to subdivision (b) of Section 3700 of
32 the Labor Code.

33 (4) “Covered claims” does not include any obligations
34 of the insolvent insurer arising out of any reinsurance
35 contracts, nor any obligations incurred after the
36 expiration date of the insurance policy or after the
37 insurance policy has been replaced by the insured or
38 canceled at the insured’s request, or after the insurance
39 policy has been canceled by the association as provided
40 in this chapter, or after the insurance policy has been

1 canceled by the liquidator, nor any obligations to any
2 state or to the federal government.

3 (5) “Covered claims” does not include any obligations
4 to insurers, insurance pools, or underwriting associations,
5 nor their claims for contribution, indemnity, or
6 subrogation, equitable or otherwise, except as otherwise
7 provided in this chapter.

8 An insurer, insurance pool, or underwriting association
9 may not maintain, in its own name or in the name of its
10 insured, any claim or legal action against the insured of
11 the insolvent insurer for contribution, indemnity or by
12 way of subrogation, except insofar as, and to the extent
13 only, that the claim exceeds the policy limits of the
14 insolvent insurer’s policy. In those claims or legal actions,
15 the insured of the insolvent insurer is entitled to a credit
16 or setoff in the amount of the policy limits of the insolvent
17 insurer’s policy, or in the amount of the limits remaining,
18 where those limits have been diminished by the payment
19 of other claims.

20 (6) “Covered claims,” except in cases involving a
21 claim for workers’ compensation benefits or for unearned
22 premiums, does not include any claim in an amount of
23 one hundred dollars (\$100) or less, nor that portion of any
24 claim that is in excess of any applicable limits provided in
25 the insurance policy issued by the insolvent insurer.

26 (7) “Covered claims” does not include that portion of
27 any claim, other than a claim for workers’ compensation
28 benefits, that is in excess of five hundred thousand dollars
29 (\$500,000).

30 (8) “Covered claims” does not include any amount
31 awarded as punitive or exemplary damages.

32 (9) “Covered claims” does not include (i) any claim to
33 the extent it is covered by any other insurance of a class
34 covered by this article available to the claimant or insured
35 nor (ii) any claim by any person other than the original
36 claimant under the insurance policy in his or her own
37 name, his or her assignee as the person entitled thereto
38 under a premium finance agreement as defined in
39 Section 673 and entered into prior to insolvency, his or her
40 executor, administrator, guardian or other personal

1 representative or trustee in bankruptcy and does not
2 include any claim asserted by an assignee or one claiming
3 by right of subrogation, except as otherwise provided in
4 this chapter.

5 (10) “Covered claims” does not include any
6 obligations arising out of the issuance of an insurance
7 policy written by the separate division of the State
8 Compensation Insurance Fund pursuant to Sections
9 11802 and 11803.

10 (11) “Covered claims” does not include any
11 obligations of the insolvent insurer arising from any
12 policy or contract of insurance issued or renewed prior to
13 the insolvent insurer’s admission to transact insurance in
14 the State of California.

15 (12) “Covered claims” does not include surplus
16 deposits of subscribers as defined in Section 1374.1.

17 (d) “Admitted to transact insurance in this state”
18 means an insurer possessing a valid certificate of
19 authority issued by the department.

20 (e) “Affiliate” means a person who directly or
21 indirectly, through one or more intermediaries, controls,
22 is controlled by, or is under common control with an
23 insolvent insurer on December 31 of the year next
24 preceding the date the insurer becomes an insolvent
25 insurer.

26 (f) “Control” means the possession, direct or indirect,
27 of the power to direct or cause the direction of the
28 management and policies of a person, whether through
29 the ownership of voting securities, by contract other than
30 a commercial contract for goods or nonmanagement
31 services, or otherwise, unless the power is the result of an
32 official position with or corporate office held by the
33 person. Control is presumed to exist if any person,
34 directly or indirectly, owns, controls, holds with the
35 power to vote, or holds proxies representing, 10 percent
36 or more of the voting securities of any other person. This
37 presumption may be rebutted by showing that control
38 does not in fact exist.

39 (g) “Claimant” means any insured making a first party
40 claim or any person instituting a liability claim; provided

1 that no person who is an affiliate of the insolvent insurer
2 may be a claimant.

3 (h) "Ocean marine insurance" includes marine
4 insurance as defined in Section 103, except for inland
5 marine insurance, as well as any other form of insurance,
6 regardless of the name, label, or marketing designation of
7 the insurance policy, that insures against maritime perils
8 or risks and other related perils or risks, which are usually
9 insured against by traditional marine insurance such as
10 hull and machinery, marine builders' risks, and marine
11 protection and indemnity. Those perils and risks insured
12 against include, without limitation, loss, damage, or
13 expense or legal liability of the insured arising out of or
14 incident to ownership, operation, chartering,
15 maintenance, use, repair, or construction of any vessel,
16 craft or instrumentality in use in ocean or inland
17 waterways, including liability of the insured for personal
18 injury, illness, or death for loss or damage to the property
19 of the insured or another person.

20 (i) "Unearned premium" means that portion of a
21 premium that had not been earned because of the
22 cancellation of the insolvent insurer's policy and is that
23 premium remaining for the unexpired term of the
24 insolvent insurer's policy. "Unearned premium" does not
25 include any amount sought as return of a premium under
26 any policy providing retroactive insurance of a known
27 loss or return of a premium under any retrospectively
28 rated policy or a policy subject to a contingent surcharge
29 or any policy in which the final determination of the
30 premium cost is computed after expiration of the policy
31 and is calculated on the basis of actual loss experience
32 during the policy period.

33 SEC. 2. Section 1.5 of this bill incorporates
34 amendments to Section 1063.1 of the Insurance Code
35 proposed by both this bill and SB 1277. It shall only
36 become operative if (1) both bills are enacted and
37 become effective on or before January 1, 1998, (2) each
38 bill amends Section 1063.1 of the Insurance Code, and (3)

- 1 this bill is enacted after SB 1277, in which case Section 1
- 2 of this bill shall not become operative.

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